Supreme Court of the United States

OCTOBER TERM, 1966

No. 159

GEORGE McCRAY, PETITIONER

vs.

ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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[Vol. A]

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

SUPREME COURT NO. 38941

[File Endorsement Omitted]

PEOPLE OF THE STATE OF ILLINOIS, APPELLEE

vs.

GEORGE MCCRAY, APPELLANT

Appeal from Circuit Court of Cook County
Criminal Division

Cir. Ct. No. 64-1318

HONORABLE

IRWIN COHEN
Presiding Judge

APPELLANT'S ABSTRACT—Filed November 5, 1964

* * * *

[fol. 1]

IN THE

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * * *

NOTES OF PROCEEDINGS

Grand Jury returns indictment 64-1318 before Honorable Alexander J. Napoli, April 24, 1964.

Indictment 64-1318 alleges that on February 16, 1964, George Mc Cray knowingly had under his control heroin contrary to the statute.

Appearance of Sam Adam as attorney for George Mc Cray filed April 27, 1964.

[fol. 2] Defendant arraigned April 30, 1964, Defendant waives reading of indictment and enters plea of NOT GUILTY. Cause assigned to Honorable Herbert C. Paschen.

July 30, 1964, Defendant files motion to Suppress Evidence before Honorable Irwin H. Cohen. Hearing had upon aforesaid motion to Suppress Evidence:

Testimony of witnesses.
Motion to Suppress Evidence Denied.
Plea of NOT GUILTY upon Indictment.

Cause submitted to Court. Finding by Court that George Mc Cray is guilty of unlawful possession of narcotics in manner and form as charged in indictment. Motions by defendant for New Trial and in Arrest of Judgment denied by Court.

Order of Court that defendant be sentenced to Illinois State Penitentiary for not less than two (2) years nor more than two (2) years and one (1) day.

[fol. 3] Advisement by Court.

Notice of Appeal filed by Sam Adam, July 31, 1964.

Petition for Common Law Record and Stenographic Transcript of Proceedings.

Order by Court allowing and granting Petition for Common Law Record and Stenographic Transcript of Proceedings.

SAM ADAM appointed by Court as counsel for defendant for purposes of appeal.

September 17, 1964, order by Alexander J. Napoli, chief judge of Criminal Division of Circuit Court of Cook County, extending time for filing Report of Proceeding to and including October 2, 1964.

Report of Compliance in above cause signed October 2, 1964, by Official Shorthand Reporter.

Written Motion of Defendant filed and states as follows:

[fol. 4]

* * * * *

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

[Title Omitted]

MOTION TO SUPPRESS EVIDENCE AND STATEMENT

Now comes Petitioner, GEORGE McCRAY, by and through his attorney SAM ADAM, and states to the Court as follows:

1. That the Petitioner at all times herein mentioned is and has been a citizen of the United States and the State of Illinois.

2. That Petitioner is the Defendant in the above Indictment Number 64-1318 charged with possession of Heroin.

3. That your Petitioner, on or about January 16, 1964, was walking South on South Park Avenue at ap-
[fol. 5] proximately 49th Street in the City of Chicago, Illinois.

4. That Police Officers of the City of Chicago whose names are not known to your Petitioner but one of whom your Petitioner believes to be Officer James Arnold of the Chicago Police Department, arrested your Petitioner and search your Petitioner and seized from your Petitioner a certain white powder.

5. That prior to the arrest of your Petitioner, your Petitioner was violating no law, nor had he been violating any law or ordinance of the City of Chicago, the State of Illinois, the United States of America, nor any other soverign.

6. That the aforesaid Officers did not have an Arrest Warrant for the arrest of your Petitioner.

7. That the aforesaid Officer did not have a Search Warrant for the search of your Petitioner.

8. That your Petitioner at no time consented to the search of his person but on the contrary, at all times protested the said search.

9. That after, and as a result of, the aforesaid illegal arrest of your Petitioner, your Petitioner made certain [fol. 6] incriminating oral statements.

10. That the said Arrest, Search and Seizure were illegal and unlawful and in violation of the rights guaranteed your Petitioner by the Constitution of the United States of America and the Constitution of the State of Illinois, to-wit:

THE CONSTITUTION OF THE UNITED STATES:

Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing a place to be searched and the persons or things to be seized."

Fifth Amendment:

". . . No person shall be compelled in any criminal case to be a witness against himself, nor be deprived [fol. 7] of life, liberty or property without due process of law."

Fourteenth Amendment:

". . . Nor shall any State deprive any person of life, liberty or property without due process of law."

THE CONSTITUTION OF THE STATE OF ILLINOIS:

Article 2, Section 2:

"No person shall be deprived of life, liberty or property without due process of law."

Article 2, Section 6:

"The right of the people to be secure in their persons, houses, papers, and effects against unlawful searches and seizures shall be violated, and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched and the persons or things to be seized."

Article 2, Section 10:

:No person shall be compelled in any criminal case [fol. 8] case to give evidence against himself."

WHEREUPON, your Petitioner, prays that an order may be entered suppressing said property so unlawfully seized and the aforesaid evidence alleged to have been so obtained, and that same be excluded as evidence against him upon his trial, and that the said property be returned to him forthwith.

/s/ GEORGE MCCRAY
Defendant

[Duly Sworn to by George McCray
Jurat Omitted in Printing]

[fol. 9]

Transcript of Testimony on Motion

George McCray, first being sworn testified as follows:

DIRECT EXAMINATION BY MR. ADAM

My name is George McCray, 5217 Calumet. I resided there with my uncle on January 16, 1964.

I was arrested January 16, 1964, by Officers Arnold and Jackson. There is Officer Jackson (indicating).

I was arrested about 5:30 in the morning at 49th and Calumet. I came across 48th Street. The Officers stopped me going through the alley. I had not committed a violation of an ordinance or statute when they stopped me. I was walking along the street.

The officers did not show me a search warrant for my person or an arrest warrant for my arrest. The officers searched me. They made me put off my clothes.

When the officers took off my clothes I was standing outside the car. After he had me put on my clothes, [fol. 10] except my pants and shirt he told me to get in the car and finish pulling off my clothes. So he told me to get back out of the car and said he found something. They did not seize anything at that time.

When I got out of the car they said they had found something when I got out of the car they said they had found something.

Q. (BY THE COURT) Did they take anything away from you?

A. No, sir.

* * * *

Q. (BY THE COURT) I am asking you again, do you feel all right?

A. Yes, sir, I feel all right, just sleepy.

* * * *

Q. (BY MR. ADAM): When they had you in the car did they find, did they seize from you a white powder at that time?

A. Yes, sir.

That is the same white powder that is the subject mat-[fol. 11] ter of this indictment.

CROSS EXAMINATION BY MR. ENGERMAN

I don't recall what day of the week I was arrested. I was unemployed.

I was arrested at 5:30 A.M. about 3 blocks from my home. Before my arrest I was at a friend's house, located at 48th and Forrestville. A half hour elapsed between my leaving my friend's house and when I was arrested. I walked from the friend's house across 48th and South Park.

I walked with a lady from 48th to 48th and South Park. I was arrested about a block from my friend's house. The weather was real cold, snow on the ground a half inch deep.

I knew the officers from before that day.

I had on three coats. The officers that arrested me had me take off my clothes. I took off all the coats I had on. They examined the coats. Then they had me get in the squad car. I was on the driver's side of the car in [fol. 12] the back seat. They laid the coats across the front seat. The officers then had me completely undress in the squad car. They made met get out of the car with only my pants half on and my underclothes. The officer had me stand outside. The officer showed me a cigarette package with some tinfoil in it. It was not mine.

I had a little wine before going to court today.

I was drinking last night and didn't go to bed all night.

The Court: I want to know if they did obtain this material from you or whether they did not get it off your person or from your clothing. What do you say?

A. Yes, sir, they had to get it off of me.

* * * *

They got the evidence while searching me. It is my cigarette pack. Whatever is in it belonged to me. Five packs, four large ones and one small one was in the package.

NOTE RE MOTION TO DENY MOTION TO SUPPRESS AND RULING THEREON

Motion by State's Attorney that Motion to Suppress be [fol. 13] denied at close of Petitioner's evidence.

Ruling by the Court that Petitioner had made out a *prima facie* case in Support of petition to suppress.

DIRECT EXAMINATION BY MR. ENGERMAN

My name is Charles C. Jackson. I am a police officer, City of Chicago. I have been employed approximately six years. I was a police officer on January 16, 1964. I was working with Officer Nance and Office Arnold.

We were in the vicinity of 47th and Calumet and South Parkway on January 16, 1964. I was with Officers Nance, Arnold, and a police informant. We had a conversation with the police informant in the police car in the vicinity of 47th and Calumet.

Q. Approximately how long before January 16, 1964, did you first meet and discuss with this informant narcotic activities?

A. Speaking for myself, approximately one year.

[fol. 14] Q. During that period of a year, approximately how many times did you have occasion to speak to this police informant concerning narcotic activities?

A. Numerous times.

Q. Can you give us a rough approximation?

A. I would say fifteen, sixteen times at least.

Q. During those times you spoke with this police informant, was certain information given to you by this informant concerning narcotic activities?

A. Yes, sir.

Q. Did you have occasion, based upon that information, to make any arrests?

A. Made numerous arrests from his information.

Q. Based upon those arrests, to your knowledge have any convictions been obtained?

A. Yes, sir, they have.

Q. Now, the information that was furnished to you in the past by this police informant, have you had occasion to check the information out when it was given to you?

[fol. 15] A. Yes, sir, we have.

Q. Did it prove to be accurate?

MR. ADAM: Objection, Judge, that is a conclusion, an answer to that question.

THE COURT: Overrruled.

THE WITNESS: Yes, sir, it has.

THE COURT: You may cross examine with respect to that.

MR. ENGERMAN: Q. Do you have an opinion, Officer, as to whether this informant would be termed reliable?

MR. ADAM: Objection.

THE WITNESS: I would say—

THE COURT: Wait a minute. There is an objection. What is the basis?

MR. ADAM: In the first place, Judge, reliable. If he is going to say what is reliable, that is a conclusion. Secondly, I don't think this officer is qualified to give an opinion.

THE COURT: He has already said he checked out information and it proved to be accurate. I will sustain the objection.

[fol. 16] On January 16, 1964, I was with the police informant. We had a conversation at that time.

Q. What, if anything, did this police informant tell you?

A. He stated that a man known to me as Boobie George—

Q. Spell that.

A. B-o-o-b-i-e.

—was selling narcotics and had narcotics on his person and that he could be found in the vicinity of 47th and Calumet at this particular time.

Q. Had you had occasion before January 16, 1964, to know of Boobie George?

A. Yes, sir.

Q. How many Boobie Georges had you heard of prior to January 16, 1964?

A. Only one.

Q. Do you know the correct or real name of the person that you knew before January 16, 1964, as Boobie George?

[fol. 17] A. Yes, sir.

Q. What is that name?

A. George McCray.

Q. Do you see George McCray in the court room today?

A. Yes, sir, I do.

Q. Would you point him out, please?

A. That is the gentleman in the third seat.

MR. ENGERMAN: Indicating, for the purpose of the record, the defendant in this charge, George McCray.

Q. Is that the same person you know as Boobie George?

A. Yes, sir, it is.

Q. Have you had occasion to arrest George McCray before January 16, 1964?

A. Yes, sir.

Q. And were those arrests relating to narcotics or use of narcotics?

MR. ADAM: Objection.

The informant directed us to 48th and South Park. We waited there for approximately ten minutes. The in-
[fol. 18] formant was parked across the street and pointed to George. This is the same George McCray I identified in court. This was approximately 6:55 or 7:00 A.M.

Q. What, if anything, happened after the informant pointed out the defendant, George McCray?

A. The informant left, got out of the car and left. George McCray was in the company of a female. He began to cross South Parkway westward. As he approached the northwest corner of 48th and South Parkway he had a brief conversation with the female. The female walked westward on 48th Street. Mr. McCray then turned south on South Parkway, crossed to the opposite corner. He was met by another male Negro, had a brief conversation with this person. This person left and walked west also on 48th Street.

Mr. McCray then walked south, maybe about two or three doors south on South Parkway into a vacant lot. I
[fol. 19] was driving the police vehicle at the time. I drove—

Q. Was this marked or unmarked?

A. Unmarked car. I drove south on the next block, before it. I turned westward, parked at the mouth of the alley; at this point Mr. McCray came out of the alley and also began to walk westward to the alley.

He observed the police vehicle and began to hurriedly walk between two buildings. At this point my partner and myself got out of the car and informed him we had

information he had narcotics on his person, placed him in the police vehicle at this point.

Q. What were the weather conditions at this time in the vicinity where you were at?

A. Very cold, very cold.

Q. How was the defendant dressed—strike that. How was Mr. McCray dressed?

A. He had a large heavy overcoat on, had that large sweater.

Q. You stated you had Mr. McCray get into the squad car or into the police vehicle?

A. Yes, sir.

[fol. 20] Q. What occurred when you had him enter the police vehicle?

A. We had informed him we had information he had narcotics on his person. We asked Mr. McCray to take off his coat, and which he began to do, and began acting in a fidgety manner. I was seated on the driver's side, my partner—, Officer Arnold was beside me. Officer Nance was in the back seat.

I got out of the front seat and pulled Mr. McCray out of the back seat, and just between the seats, back seat and the opening to the floor, Officer Arnold recovered a cigarette package containing five medium sized foil wrapped packages.

MR. ENGERMAN: Q. Did you recover this package or Officer Arnold.

A. Officer Arnold.

CROSS EXAMINATION BY MR. ADAM

I did not testify in the Narcotics Court. This is the first time I gave any testimony whatsoever in this case. [fol. 21] We did not have any search warrant for George McCray. At no time did we ever apply to a judge or magistrate for a search warrant or an arrest warrant for George McCray.

We acted solely on the basis of what the informant told us. When McCray was walking on the street he was committing no crime. He was not committing a crime when we saw him with his female companion.

Q. It was cold at that time?

A. Very cold.

Q. Very cold. What is the name of this informant that gave you this information?

MR. ENGERMAN: Objection, Your Honor.

THE COURT: State for the record the reasons for your objection.

MR. ENGERMAN: Judge, based upon the testimony of the officer so far that they had used this informant for approximately a year, he has worked with this indi-
[fol. 22] vidual, in the interest of the public, I see no reason why the officer should be forced to disclose the name of the informant, to cause harm or jeopardy to an individual who has cooperated with the police. The City of Chicago have a tremendous problem with narcotics. If the police are not able to withhold the name of the informant they will not be able to get informants. They are not willing to risk their lives if their names become known.

In the interest of the City and the law enforcement of this community, I feel the officer should not be forced to reveal the name of the informant. And I also cite People vs. Durr.

THE COURT: I will sustain that.

MR. ADAM: Q. Where does this informant live?

MR. ENGERMAN: Objection, your Honor, same basis.

THE COURT: Sustained.

MR. ADAM: Q. You testified, Officer Jackson, did you not, you talked with this informant about fifteen or six-
[fol. 23] teen times in the year you knew him?

A. Relative to narcotics.

Q. And you made arrests based on this information?

A. Yes, sir.

Q. How many convictions have you obtained?

A. Off hand I couldn't say. I would say we have obtained numerous, convictions?

Q. By numerous, more than three?

A. Yes.

Q. Could it be more than ten?

A. Yes.

Q. Could it be more than ten?

A. Some of the cases are pending. Convictions, I would say, maybe, approximately five, six, seven.

Q. Five or six or seven arrests—
A. Convictions.
Q. —convictions, based on this information.
Have these convictions all involved narcotics?
A. Yes, sir.
Q. Can you give us the name of one defendant that [fol. 24] was convicted based upon the information that the so-called informer or stoll pigeon gave you?
THE COURT: There is no need characterizing him with that picturesque street language.
MR. ADAM: Q. Can you give us the name of one person that was convicted, based upon the information of this so-called police informant?
A. To be correct, at this point, I couldn't.
Q. Well, can you give us the approximate date of the last time?
A. If counsel will pass my testimony a moment I can give you dates and times.
Q. No, as you sit there now can you give us the name of one person that has been convicted, based on the information this particular information this particular informant gave you?
A. Yes, sir, Rhodell Brengettsy.
Q. Do you know tow to spell—
A. Yes, B-r-e-n-g-e-t-t-s-y. First name R-h-o-d-e-l-l.
THE COURT: Is that a male or a female?
THE WITNESS: Male.
[fol. 25] MR. ADAM: Q. What court was he convicted in?
A. Judge Morrissey.
Q. What was the charge there?
A. Possession of narcotics.
Q. Were you the arresting officer?
A. Officer Arnold and myself, yes, sir.
Q. What was the approximate date?
A. A month ago, maybe two or three weeks ago.
Q. Was it during the month of July of this year?
A. It could have been July or June, I don't know.
Q. And what was the charge there?
A. Possession of narcotics.
Q. I see.

A. On two counts.

Q. What was the factual situation regarding the arrest—strike that.

Was the arrest in that case based solely upon the information that your informant gave you?

A. Yes, sir.

[fol. 26] There was also a Robert Lee Smith. You asked for convictions. I am trying to recollect names.

Q. Robert Lee Smith?

A. Yes, sir.

Q. When was he convicted?

A. I think it was in the month of May, May or April.

Q. Of this year?

A. Yes, sir.

Q. What court was that?

A. I don't remember, actually, what court it was in. I recall there was a search warrant issued. He was found guilty and given probation because of his background.

Q. You don't remember the judge at that hearing?

A. At this point I don't recall, no, sir.

Q. Was that search warrant procured as a result of this informant?

A. Yes.

Q. Was this informant named in the search warrant?

[fol. 27] A. Yes.

Q. Was his correct name stated?

A. He signed his name.

Q. Was it his correct name?

A. He signed his name.

Q. Was it his correct name?

A. As far as I know.

Q. In this Rhodell Brengettsy case, did the informant appear and testify?

A. No, he did not.

Q. You appeared and testified?

A. Yes, sir, I did.

Q. In the Robert Lee Smith case, did the informant appear and testify?

A. No, sir, he did not.

Q. Going back to the Brengettsy case, did you testify in that case that you had received information from this informant?

A. Yes, sir.

Q. Has this so-called informant ever appeared in court on cases in which you are involved?

A. Not that I can remember.

Q. So, in other words, the cases you have been in-
[fol. 28] volved in, he has always remained in the background and given you information?

A. We still have cases pending that—

MR. ADAM: I disclaim that answer, Judge.

Q. The question is, in the cases that you have used this informant here, he has never appeared to date, has he?

A. Not to date.

DIRECT EXAMINATION BY MR. ENGERMAN

My name is James W. Arnold. I am a police officer, city of Chicago. I have been a police officer for almost seven years.

I was working with Officers Charles Jackson and Willie Nance. On January 16, 1964, I was in my automobile with Officers Jackson, Nance, and a special employee. We had a conversation with the special employee in the vicinity of 47th and Calumet. I have known the police informant roughly two years.

I had talked to him prior to January 16, 1964. I have
[fol. 29] spoken to him at least 50 times concerning narcotics. He has given me information concerning narcotics about 20 or 25 times. I have made an arrest solely upon the information furnished me by this informant. I have secured convictions based upon the information given to me by this informant. The special employee stated that a male Negro known to him as Boobie George was selling narcotics and had narcotics on his person now in the vicinity of 47th and Calumet.

I knew a man on January 16, 1964, by the name of Boobie George. His right name is George McCray. I see him here in court. I have seen George McCray 40 or 50 times prior to January 16, 1964.

Q. What, if anything, did you do after receiving the information from this police informant?

A. The two officers and myself, along with the special employee, drove around the block and we didn't see him immediately.

[fol. 30] Q. By *him*, who do you refer to?

A. Mr. McCray.

The special employee stated "Go over to South Park on the service drive and go midblock and park." Because Boobie George lived just south of this. We did not know the correct address. Officer Jackson was driving. We parked approximately mid-way of the service drive.

Q. Was there any conversation?

A. None, other than after we parked, but he said, "there is Boobie now."

Q. Did the special employee stay in the car or leave?

A. He got out of the car.

Q. What occurred after the special employee or informant left the automobile?

A. After the special employee left the car Mr. McCray, in the company of a female Negro, was walking west on 48th Street across South Park. They stopped in the northwest corner of the service sidewalk and had a brief con-
[fol. 31] versation. She continued west on 48th Street. Mr. McCray went south across 48th on South Park as far as the drive, met another male Negro and had a conversation. This male Negro walked west.

Mr. McCray walked across on the service drive approximately three or four doors, went in a southwesterly direction through a vacant lot. Officer Jackson drove the car to 49th and South Park and parked at the mouth of the alley. Mr. McCray was walking south through the alley and Officer Jackson proceeded to drive into the alley.

Mr. McCray, looking up, saw this squad car. He began to walk hurriedly between two buildings at about 4847-49 South Calumet. When I stopped Mr. McCray, I said "Boobie—" that is what I called him—"Boobie, you have been identified and pointed out as having narcotics on your person now."

He said, "You know I am not silly enough to walk with violations on me on the street."

I said, "If you are clean you will have nothing to
[fol. 32] worry about."

Officer Jackson parked the car at this vicinity. I got out of the car and had this conversation with him.

He said, "Go ahead and search me. You know I am

not crazy enough to walk on the street with violations on me."

The weather was extremely cool. He had, I believe it was a three-quarter length coat, a sweater, maybe several sweaters, on him. I said, "Get in the car. It is too cold out."

He got in the car, removed the outer coat only. His left sleeve, as we were having a conversation at the car, he put his left arm like in this manner, and moved it in a motion, like this.

MR. ENGERMAN: Indicating, for the record, the left hand extended, bent at the elbow, and the inner portion of the hand facing toward the rear.

THE WITNESS: That's right.

MR. ENGERMAN: And the arm bending towards the rear from the elbow.

[fol. 33] THE WITNESS: That is right.

I recovered the cigarette package with five foil-wrapped packages. After I observed this cigarette package, I asked Mr. McCray to step out of the car.

CROSS EXAMINATION BY MR. ADAM

I did not have a search warrant for George McCray. I did not have no arrest warrant for George McCray. I did not see him in the commission of any crime. Neither my partners, nor myself have a search warrant for George McCray. We encountered the informant at approximately 6:00, between 6:50 and 6:55 a.m. We encountered him at 47th and Calumet. He came up and got into the car.

Q. At that time you, the informant, Officer Jackson and Officer Nance were in the car, is that right?

A. Yes sir.

Q. Now, to the best of your recollection what did that [fol. 34] informant say to you at that time?

A. He stated that Boobie George was selling narcotics and had the same on his person in the vicinity of 47th and Calumet.

Q. What did you say?

A. And I said—

Q. What did you say at that time?

A. I asked him how did he know that, that he had it on his person now. He said he observed him sell narcotics to various people.

Q. Various people. Then what did he say then, if anything?

A. We discussed it generally for a second or two and he suggested that we drive around the block and see if we could see him.

Q. Officer, has this informer appeared in court on cases which you have been a police officer, with you?

A. No, sir, there has never been any need.

Q. That is not the question.

A. No, sir, he has never appeared, no.

[fol. 35] Q. He has never appeared. What is his name?

MR. ENGERMAN: Objection, Your Honor.

THE COURT: Sustained.

MR. ADAM: Q. What is his address at the present time?

MR. ENGERMAN: Objection.

THE COURT: Sustained.

MR. ADAM: Q. The sole reason for you stopping and arresting the defendant, George McCray, at approximately 7:00 a.m. the morning of January 16, 1964, was upon information by this person who is not present in court today, is that correct?

A. That is correct, sir.

MR. ADAM: No further questions.

MR. ENGERMAN: Nothing further.

MR. ADAM: All right, Judge I would like to recall the defendant—I am sorry, I thought the State—

THE COURT: When you asked the special employee, "How do you know Boobie George has narcotics on his person now?" what did he say?

[fol. 36] THE WITNESS: He said he had observed him selling narcotics to various people, meaning various addicts, in the area of 47th and Calumet.

THE COURT: Did you ask him anyt additional questions?

THE WITNESS: Yes, sir.

THE COURT: Did you ask him when he saw these sales made?

THE WITNESS: Yes, sir.
THE COURT: What did he say?
THE WITNESS: He stated just prior to him meeting us.
THE COURT: Did he say he had seen these sales?
THE WITNESS: Yes, sir.
MR. ENGERMAN: I have no further questions.

(Witness excused.)

STIPULATION AS TO PRIOR CONVICTION

Stipulated defendant convicted for Burglary in Mississippi in 1945.
[fol. 37] The State rested.

GEORGE McCRAY testified, having been first sworn.
My name is George McCray.
I have previously testified in this matter.
I gave no officers permission to search me.

DENIAL OF MOTION TO SUPPRESS

Motion to Suppress denied.
Stipulation between Assistant States's Attorney and Defense counsel that the testimony heard on the motion.
Defense counsel objects to admission of State's Exhibits into evidence.
Stipulated age of defendant to be 37 years.
People rest.
Defense Rests
Motion for new trial and motion in arrest of judgment denied.

Certification by Official Shorthand Reporter.

[fol. 38]

IN THE SUPREME COURT OF ILLINOIS

Docket No. 38941—Agenda II—March 1965.

THE PEOPLE OF THE STATE OF ILLINOIS, APPELLEE

v.

GEORGE MCCRAY, APPELLANT

OPINION—May 20, 1965

Mr. JUSTICE SOLFISBURG delivered the opinion of the court:

This appeal presents the question of the validity of an arrest by a police officer without a warrant based upon information supplied by an unidentified informant. Defendant, George McCray, was tried before a judge of the circuit court of Cook County on a charge of unlawful possession of narcotics, found guilty, and sentenced to a term of from two years to two years and one day.

On this appeal defendant seeks reversal on the sole ground that his constitutional rights were violated by the introduction into evidence of narcotics found on his person at the time of his arrest.

Prior to trial defendant filed a motion to suppress the evidence of the narcotics. In support of the motion defendant testified that on January 16, 1964, he had just left a friend's house at 5:30 A.M. and was walking on 49th Street and Calumet Avenue in Chicago when he was arrested by police officers without a warrant. He was searched and police seized narcotics from him.

Charles Jackson, one of the arresting officers, testified that he and officers Arnold and Nance met with an informant at 47th and Calumet on the morning of the arrest. He stated that he had known the informant for approximately one year and had talked to him many times securing information regarding narcotics and that the information received resulted in numerous arrests and at least 6 or 7 convictions. He stated that the informant told him that he saw one "Boobie George" selling narcotics

in the vicinity and that he had narcotics with him. Officer Jackson knew that "Boobie George" was the name used by defendant, George McCray, because he had had occasion to arrest the defendant previously. The informant then directed the police to the area where the defendant had been seen walking.

The other arresting officer, James Arnold, stated he had known the informant for five years and had talked to him about narcotics about fifty times. Arnold testified that from this information numerous arrests and convictions had been secured. Arnold also testified as to the information given by the informant and stated that he knew [fol. 39] Boobie George was the defendant, George McCray, because he had been acquainted with him and had seen him at least fifty times prior to the arrest.

The two officers then found the defendant walking around 48th and Calumet and arrested and searched him and found narcotics on his person. The defendant denied that he had sold narcotics and stated that he had been at a friend's house all night.

Defendant's counsel asked both officers the name of the informant and his present address, and the trial court sustained objections to all such questions. The trial court denied defendant's motion to suppress the evidence of the narcotics and the defendant was convicted of the charge of possession of narcotics.

The State contends that the search and seizure and the resulting conviction in this case are proper under our ruling in *People* v. *Durr*, 28 Ill.2d 308. The defendant, however, argues that the facts in the case at bar are distinguishable from *Durr*, or, in the alternative that the *Durr* case should be overruled.

The crux of the case is the question of the legality of the defendant's arrest, since it is clear that a search of the person without a warrant is proper, and the evidence found is admissible, if the search is incident to a lawful arrest. *People* v. *Pitts*, 26 Ill.2d 395; *United States* v. *Rabinowitz*, 339 U.S. 56, 94 L. ed. 653.

An arrest by a police officer without a warrant is lawful if the officer "has reasonable ground for believing that the person to be arrested has committed" a criminal of-

fense. (*People* v. *Durr*, 28 Ill.2d 308.) In *Durr* we held that such reasonable ground may be supplied by information from an informant of established reliability, even though the State refuses to reveal the identity of the informant, provided that the informant neither participated in the crime or was present at the time of the arrest.

Defendant attempts to distinguish the *Durr* case on the ground that Durr did not contradict the truth of the statements made by the informant, but this defendant testified that he had just left a friend's house, thereby contradicting the informant's statement that he had seen him selling narcotics in the vicinity.

We do not think this difference in facts makes the rationale of *Durr* inapplicable to the case at bar. The criterion established in the *Durr* case was whether or not the reliability of the informant was so established as to [fol. 40] justify a reasonable basis for the police officers' belief that the person to be arrested had committed a crime. The subsequent denial of a sale by the defendant cannot affect the issue of whether or not the officers had a reasonable basis to believe he was committing a crime. We therefore consider *People* v. *Durr* applicable to the case at bar.

We have, however, because of the importance of the issues involved, carefully considered defendant's argument that our decision in *Durr* should be overruled.

It is well settled in this State that arresting officers may have reasonable grounds for believing a defendant was committing a crime based upon information supplied by an informant if the reliability of the informant has been previously established or independently corroborated. *People* v. *McFadden*, 32 Ill.2d 101; *People* v. *La Bostrie*, 14 Ill.2d 617; *People* v. *Tillman*, 1 Ill.2d 525; *Draper* v. *United States*, 358 U.S. 307, 3 L. ed. 2d 327.

However, we have also held that information obtained from a source unknown to the police officer is not sufficient in itself to establish such reasonable grounds for belief as to justify an arrest and incidental search without a warrant. *People* v. *Pitts*, 26 Ill.2d 395; *People* v. *Parren*, 24 Ill.2d 572.

We also feel that on a motion to suppress evidence, the State must show the basis of the arresting officers' be-

lief, including facts relating to the credibility of the informant. (*Aguilar* v. *Texas*, 378 U.S. 108, 12 L. ed. 2d 723, 729.) While the *Aguilar* case involved an application for a search warrant rather than an arrest without a warrant, the language of the majority opinion at 378 U.S. 108, 12 L. ed. 2d at 729, is pertinent: "Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, Jones v. United States, 362 U.S. 257, 4 L. ed. 2d 697, 80 S. Ct. 725, 78 A.L.R. 2d 233, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, *whose identity need not be disclosed*, see Rugendorf v. United States, 376 U.S. 528, 11 L. ed. 2d 887, 84 S. Ct. 825, was 'credible' or his information 'reliable'." (Emphasis supplied.)

In the case at bar both arresting officers testified fully as to long knowledge of the informant, and his proven reliability based upon six or seven convictions resulting from [fol. 41] his information. Their testimony was even more complete than that contained in an affidavit for a search warrant approved in *Jones* v. *United States*, 362 U.S. 257, 267, 4 L. ed. 2d 697, 706. In addition, the informant's tip was in part corroborated by the fact that the officers found defendant in the same vicinity as reported to them by the informant. See *People* v. *McFadden*, 32 Ill.2d 101.

We therefore conclude that the evidence on the motion to suppress justified a determination that the officers had such a reasonable belief that defendant was committing a criminal offense as to justify the arrest without a warrant and the subsequent incidental search.

The only remaining issue is whether the State's reliance on the "informant's privilege," in refusing to reveal his identity, vitiates the otherwise lawful arrest.

In *People* v. *Durr*, 28 Ill.2d 308, we recognized the difference of opinion on this subject, and carefully examined the opposing policies involved. We concluded that justice would be better served by sustaining the privilege and upholding the arrest.

Defendant, however, insists that our decision in *Durr* makes the arresting officer the sole judge of the reliability of the informant, and therefore the final arbiter in determining the propriety of the arrest. We do not agree. In *Durr*, and more fully in the case at bar, the arresting officers testified to specific facts justifying their reliance on the informant. Here an arresting officer gave the names of specific persons convicted on the basis of information supplied by the same informant. It remained for the trial judge to determine the credibility of the witnesses and to decide if the facts proved justified the officers reliance on the informant.

We understand that defendant's cross-examination on this issue is limited by the nondisclosure of the informant, but we feel that this right of full cross-examination must give way in the face of a compelling policy to protect informants in the stealthy and vicious traffic in narcotics. The preliminary hearing, and the information given by the informant, did not go to the guilt or innocence of the accused. There is no suggestion that the informant was so involved in defendant's activity that fundamental fairness requires that his identify be revealed for the defense of the charge. (*Cf. People* v. *Mack*, 12 Ill.2d 151; *Roviaro* v. *United States*, 358 U.S. 53, 1 L. ed. 2d 639.) Nor is defendant denied the right to face his accuser in any constitutional sense, for nothing the information revealed [fol. 42] would be admissible upon the trial of the charge.

It appears implicit in the argument of defendant, and also in those opinions adopting a contrary view to *Durr* that an arresting police officer is less worthy of belief than an ordinary witness. We cannot subscribe to this belief. Trial courts must constantly determine the credibility of police officers in cases of alleged brutality, in cases where the arresting officer has seen a crime being committed, and on other matters of fact involving the legality of arrests or convictions. We refuse to accept the argument that the testimony of a police officer, under oath as to facts establishing the reliability of an informant, is incredible of belief. The trial court here was entitled to determine the credibility of these officers in their testimony that the informant here was proved reliable by

six or seven narcotics convictions arising out of information obtained from him.

In addition to re-examining the policies underlying our decision in *Durr*, we have also considered the recent decisions of Federal courts urged upon us that were published subsequent to our decision in *Durr*. In *Costello* v. *United States*, (9th cir.) 298 F.2d 99, 101, the arrest was held invalid where the informant was uncorroborated and was unknown even to the police. In *United States* v. *Robinson*, (2d cir.) 325 F.2d 391, a conviction was reversed where the defendant was refused the name of the informant by the trial court. However, it also appears that the trial court apparently held that the narcotics agent was not subject to further examination on other crucial facts.

In *Aguilar* v. *Texas*, 378 U.S. 108, 12 L. ed. 2d 723, the Supreme Court clearly indicated in the case of a search warrant that the name of the informant need not be revealed if sufficient facts are shown to establish reliability.

We are well aware that there are decisions in other jurisdictions that cannot be reconciled with the view we take. Many of these decisions were referred to in the majority opinion in *People* v. *Durr*, 28 Ill.2d 308, 314, and in the dissenting opinion at 28 Ill.2d 319. Nevertheless, we believe that an accused is afforded constitutional protection against unreasonable search and seizure if the State is compelled to support a search incidental to an arrest without a warrant by credible evidence showing the basis for reasonable cause by the arresting officer. We do not believe that it is necessary to bare the identity of every informant assisting society in its struggle against the narcotic traffic in order to preserve the fundamental guarantees of the constitution. Otherwise the so-called informant's privilege and its value would disappear. We, therefore, adhere to our decision in *People* v. *Durr*, 28 Ill.2d 308, and the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

Mr. JUSTICE SCHAEFER, concurring:

I concur under the compulsion of *People* v. *Durr*, 28 Ill.2d 308.

[fol. 43]

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IN THE SUPREME COURT OF ILLINOIS

No. 38941

PEOPLE STATE OF ILLINOIS, APPELLEE

vs.

GEORGE MCCRAY, APPELLANT

Appeal from Circuit Court Cook County (Criminal Division) 64-1318

Error to

JUDGMENT—May 20, 1965

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.

* * * *

[fol. 44]

[Petition for rehearing covering 10 pages filed June 9, 1965 omitted from this print. It was denied, and nothing more by order.—September 27, 1965]

[fol. 45]

* * * *

IN THE SUPREME COURT OF ILLINOIS

* * * *

ORDER DENYING PETITION FOR REHEARING—Sept. 27, 1965

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 46]

[Clerks Certificate to foregoing Transcript Omitted in Printing]

[fol. 47]

SUPREME COURT OF THE UNITED STATES

No. 1037 Misc., October Term, 1965

GEORGE McCRAY, PETITIONER

v.

ILLINOIS

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 23, 1966

On petition for writ of Certiorari to the Supreme Court of the State of Illinois.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1340 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 224650 26